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<u>PATENT</u>

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of)	
)	**Before the**
Applicants: Howard Rafal et al.)	Board of Patent Appeals
)	and Interferences
Serial No. 09/778,281)	
)	Examiner Victor Lesniewski
Filed: February 7, 2001)	Art Unit 2155
)	
Title: Methods and apparatus for creating and hosting)	
customized virtual parties via the Internet)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

FAX TRANSMISSION COVER LETTER

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I certify that the attached APPELLANTS' REPLY BRIEF is being
transmitted via facsimile to the central facsimile number of United States Patent
and Trademark Office, (571) 273-8300, on May 14, 2006.

Respectfully submitted,

Dated: May 14, 2006

Charles G. Call, Reg. 20,406
USPTO Customer No. 021253
68 Horse Pond Road
West Yarmouth, MA 02673-2516
Fax: (508) 629-6540

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Dear Sir:

APPELLANTS' REPLY BRIEF

This brief replies to the Examiner's Answer Brief mailed on March 14, 2006.

In general, the Appellants' Brief and the Examiner's Answer contain a full discussion of the issues on this appeal, and this Brief will accordingly focus on a few limited points raised for the first time in the Examiner's Answer.

The "Grounds of Rejection" stated in Section (9) of the Examiner's Action at pages 3-9 repeat verbatim the grounds stated in the Final Rejection mailed on January 26, 2005. Accordingly, Appellants' comments will be limited to the new points raised in the "Response to Argument" in Section (10) on pages 9-16 in which the Examiner offers reasons why the rejections should be sustained.

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The Applicability of 35 U.S.C. §112, Paragraph 6

At page 10 of the Answer, the Examiner contends that Appellants' Appeal brief improperly invoked paragraph 6 of 35 U.S.C. §112 with respect to all claims. The Examiner states his belief that claims 1-12 do not recite "means for" claims of the kind defined by that section, and points out the Appellants had not previously specified that the claims were to be treated under §112 , ¶6 as required by MPEP §2181.

The Examiner is correct that Appellants have not previously stated a wish to have the claims treated under §112, ¶6 as required by the guidelines stated in MPEP §2181. Appellants further agree that the claims that do not use the precise phrase "step for" (Appellants' claims are all method claims directed to a combination of "steps of") and that, under the guidelines, these claims need not be treated under §112, ¶6.

It was not Appellants' intention to rely on §112, ¶6 in this Appeal or to contend that the Examiner had failed to properly interpret the claims under §112, ¶6. Rather, Appellants' arguably inaccurate statement in the Appeal Brief at page 8 that the claims were directed to a combination of "steps for" performing specified functions was prompted solely by an attempt to comply with the briefing requirement of 37 CFR §41.37. That rule states that *"every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters."* It was Appellants' view that his rule arguably requires a full identification in the Appeal Brief of the structures and acts disclosed for every recited function in the claims. It was not Appellant's intent to contend that the Examiner failed to properly follow the requirements of *In re Donaldson Company, Inc.*

In this Appeal, Appellants contend that the express language of the claims fully distinguishes over the cited references. Because, as discussed in the Appeal Brief and further discussed below in this Reply, the cited references do not perform the functions expressly recited in the claims, the question of whether or not these references describe structures, material, or acts for performing those functions which are the same as or equivalent to the structures or acts described in Appellants' specification need not be addressed on this appeal.

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Ground 1 (claims 1-12)

The Examiner maintains his contention that the combination of Tatham and Maurille does disclose "template data defining one or more web pages" as recited in claim 1. The Examiner suggests that Tatham's "workgroup creation template does in fact define template web pages" because the "workgroup creation template and the private office suite are accessed over an intranet or the Internet via a web browser" and because the "workgroup creation template is used to create the private office suite."

Appellants do not contend that Tatham's "workgroup creation template" as provided to a user is not delivered using a web browser interface or that it does not use web pages to "permit the primary user to define parameters of the workgroup" as stated by Tatham at col. 4, lines 55 et seq. But contrary to the Examiner's contention, the fact that the Tatham's single workgroup template (a fill-in-the-blanks form for getting parameters from the user) is completed by the user using a web browser does not mean that Tatham stores "template data defining web pages" as claimed. Instead, "workgroup template 170" that Tatham permits the user to "define parameters of the work group, such as the name of the workgroup and the site to be created, the scope of the project being undertaken, the number of team members, etc." There is no suggestion anywhere in Tatham that this single "workgroup creation template" relied upon the Examiner constitutes "template data defining web pages" as claimed by Appellants.

Ground 2 (claims 1-12)

In the Appeal Brief, Appellants pointed out that Tatham further fails to disclose or suggest combining the "template data defining one or more web pages" (which Tatham doesn't disclose) and "customization data accepted from the host" to create customized web pages which together implement an online gathering.

In his Answer, the Examiner suggests that Appellants failed to address the citation at column 4, line 66 through column 5, line 14 which describes how, after Tatham obtains the parameters of a new workgroup from the user using the "workgroup creation template," an administrative subsystem uses these parameters to perform a variety of operations, none of which accepts and stores "customization data" from the user as claimed, and none of which combines

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the customization data with stored "template data defining one or more web pages" to create customized web pages which together implement an online gathering as claimed.

The Examiner notes that Tatham "refers specifically to his private office suite as 'a customizable, secure office suite'", citing Tatham at column 4, lines 28-33. But that passage merely says that users can "construct a private office" by selecting the application software that can be accessed. It in no sense suggests that the user can combine template data which defines web pages with customization data to create customized web pages that implement an online gathering.

Ground 3 (claims 1-12)

As the third ground for reversal of the Examiner's final rejection, Appellants have pointed out that, while it would arguably be obvious to add a "scheduled conferencing" application of the type taught by Maurille as one of the software office applications that a user of the Tatham office suite might elect to access and use, that in no way suggests that one skilled in the art would have reason to make the office suit itself available only at scheduled times.

Maurille teaches an application that can be used to hold an online conference at a scheduled time. People need to know when to attend a conference and a schedule is accordingly needed. Conferences are like that. Tatham teaches an office suite that makes a plurality of applications continuously available to users until its creator decides it is no longer needed. Since an online office users may want to get work done whenever the need arises, there is no reason to make that office available only at scheduled times, and very good reasons not to do so. Nothing in Maurille suggests that the Tatham office suite should be modified to operate only at scheduled time. The suggested modification of Tatham's system in view of the Maurille disclosure would not have been obvious as contended by the Examiner.

Ground 4 (claims 3-5 and 7)

These four rejected dependent claims all set forth steps which make it easier for a user to produce customized web pages that together implement a desired customized online gathering. Claims 3-5 describes a method for accepting a designation of a gathering type from the user and, responsive to this selection, automatically generating predetermined default values for the customization data which is then combined with the template data to produce preliminary

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customized web pages. Dependent claim 11 sets forth method steps including the designation of a theme by the user and the selection of the set of customized web pages from a plurality of template web pages in response to the theme selection.

But, as discussed above, neither Latham nor Maurille describes creating a customized gathering implemented by customized web pages which result from the combination of stored template web page data and customization data supplied by the user. Hence, neither of the systems described by the cited references has any need to simplify a process that neither performs. At best, if Sluiman's teaching that default values may be used were applied to the Latham office suite, Latham's "workgroup creation template" might be accompanied by default parameter data; that is, default names for the workgroup and the site to be created, a default number of team members, and a default definition for the scope of the project. But this would not suggest the subject matter claimed; that is, the use of establishing a set of default values in response to the designation of a gathering type by user as set forth in claims 3-5, or the selection of a subset of template web pages in response to the designation of a theme for the gathering accepted from the user as set forth in claim 11.

There is nothing in Sluiman's teaching of default values in an automatic application software generator that would suggest the subject matter defined in claims 3-5 and 11. Appellants do not suggest, of course, that the use of default values is new. What is suggested is that the additional recitations in dependent claims 3-5 and 11 even more clearly distinguishes Appellants' method for creating customized scheduled online gatherings from Latham's customizable office suit. These specific ways of producing customized web pages is plainly not taught or contemplated by any of the cited references.

Ground 5 (claims 6 and 10)

Dependent claims 6 further states that the customized web pages which implement the scheduled online gathering are produced by first server computer which acts as an application service provider to users who access at least some of these pages using addresses provided by a second computer. Dependent claim 10 states that the method recited in claim 8 for creating a customized onling gathering is performed by a web server that operates in collaboration with other web servers. The sited passage of Maurille at col. 5, line 55 through col. 6, line 12 clearly

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describes a single server processor 102 for producing web pages, and that passage plainly does not suggest that this server act collaboratively with another server.

Although Maurille does support the Examiner's rejection, Appellants concede that it is well know that servers can act and frequently do operate collaboratively with other web servers as the Examiner suggests in his Answer. It is submitted, however, that the invention set forth in independent claims 1 and 8 upon which claims 6 and 10 respectively depend may be implemented to advantage as an application service provider, allowing independently operated web sites to host of a scheduled customized gathering implemented by the application service provider. Thus, while collaboration between web servers is conceded to be old, it is submitted that the recitation of claims 6 and 10, combined with the recitations of their parent claims, and viewed "as a whole" as commanded by 35 U.S.C. §103, would not be obvious in view of the cited art.

Conclusion

For the reasons discussed above and in Appellants' Appeal Brief, none of the cited references is concerned with providing customizable scheduled online gatherings in which a host can provide customization data to modify previously stored template web pages which implement multiple activities for the gathering. Tatham produces a office suite which can be customized by a user selecting from an available suite of software application, but Tatham does not implement scheduled online gathering at a particular time, and does not implement the online offering by combining stored template web pages with customization data from accepted from the "host" of the gathering to produce customized web pages that implement the customized gathering.

The Examiner's final rejection of the claims is accordingly improper and should be reversed.

Respectfully submitted,

Dated: May 14, 2006   Charles G. Call, Reg. 20,406

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I hereby certify that this copy of *Appellants' Reply Brief* is being transmitted by facsimile to the central facsimile number of the U.S. Patent and Trademark Office, 571-273-8300, on May 13, 2006.

Dated: May 14, 2006   Signature _____

Charles G. Call, Reg. No. 20,406
USPTO Customer No. 021253
68 Horse Pond Road
West Yarmouth, MA 02673
Ph. (508) 778-2630 Fax (508) 629-6540
call@patentsoft.com

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